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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

TAMMY MICHELLE FRANCHIA,

Plaintiff,

v.

ANDREW SAUL,
Commissioner of Social Security,

Defendant.

Case No.: 2:20-cv--01244-NJK

**ORDER GRANTING UNOPPOSED
MOTION FOR EXTENSION OF TIME**

Defendant, Andrew Saul, Commissioner of Social Security (the “Commissioner”), by and through his undersigned attorneys, hereby moves for a 62-day extension of time to file Defendant’s Electronic Certified Administrative Record and Answer to Plaintiff’s Complaint. Defendant’s Electronic Certified Administrative Record and Answer to Plaintiff’s Complaint are due to be filed by September 15, 2020.

Defendant makes this request in good faith and for good cause, because the eCAR, which must be filed with the Answer and is necessary to adjudicate the case, is not yet available. The public health emergency pandemic caused by COVID-19 has significantly impacted operations in the Social Security Administration’s Office of Appellate Operations (OAO) in Falls Church,

1 Virginia, which is responsible for producing the eCAR that must be filed with the Answer, per 42
2 U.S.C. §§ 405(g) and (h). Prior to the COVID-19 pandemic, to safeguard Personally Identifiable
3 Information (PII), all hearing recordings, which are part of the administrative record, were
4 downloaded onto compact discs and encrypted. OAO securely routed the encrypted discs to a
5 private contractor through a daily pickup and delivery service at the Official Duty Station (ODS) in
6 Falls Church, Virginia. The private contractor would transcribe the hearing recording and send the
7 paper copy of the hearing transcript back to OAO. OAO personnel would then scan the hearing
8 transcript into the electronic record or place the hearing transcript in the paper case file. Thereafter,
9 OAO personnel would assemble the administrative record in a prescribed order. After the advent of
10 COVID-19, the Agency has taken a number of concrete steps to transition its years-old in person
11 CAR preparation process to a fully virtual one.

12 As detailed in the attached declarations from Jebby Rasputnis, Executive Director of the
13 OAO, and Christianne Voegelé, Chief of the Court Case Preparation and Review Branch 1, and
14 Acting Chief of the Court Case Preparation and Review Branch 3, of OAO, OAO has been actively
15 pursuing mitigation efforts to allow the remote preparation of administrative records to ensure a
16 continuity of operations. For cases in which the private contractors were already in possession of
17 hearing recordings for transcription, with the assistance of the Office of Acquisitions and Grants
18 (OAG), OAO received approval to receive these transcripts from the private contractors via secured
19 email, e.g., using password protection and redacted Social Security Numbers. In April 2020, OAO
20 began receiving such hearing transcripts from private contractors via secured email.

21 For cases in which OAO had not yet submitted recordings to the private contractors before
22 March 16, 2020, OAO has been pursuing all available options to obtain transcriptions for these
23 cases. In May 2020, OAO began encrypting hearing recordings and securely emailing them to the
24 contractors for transcription. Through the month of May, OAO and the contractors worked to
25 resolve technical issues that arose, particularly with large files.

26 As indicated by the Rasputnis declaration, the Commissioner must navigate and overcome
five simultaneous challenges as it transitions the preparation of eCARs from an in-person process to

1 a completely virtual one:

- 2 1. Obtaining the appropriate technology, subject to Federal purchasing rules;
- 3 2. Retraining staff on the new procedures and new technology, which differ quite
4 dramatically from the old ones;
- 5 3. Adhering to the Federal government protections for personally identifiable information
6 (PII);
- 7 4. Working with outside vendors for transcription services, including obtaining a new
8 vendor subject to Federal contracting rules; and
- 9 5. Completing security clearance processes for any new employees *and* any employees of
10 new vendors before allowing access to PII and other sensitive information of the vendors. While
11 the agency has worked hard to overcome challenges related to this transition, the agency estimates
12 that it is producing CARs at approximately one-third of the level of production pre-COVID, with
13 the hopes of increasing that rate over the next several weeks.

14 In March, April, and May 2020, during the initial stages of the pandemic, Defendant
15 requested a 90-day extension when the CAR was unavailable. Now that OAO has regained some
16 capability of producing transcripts, the Commissioner has reduced the length of extension requested
17 to 60 days. In this case, given the volume of pending cases, Defendant requests a 60-day extension
18 in which to respond to the Complaint.

19 OAO has prioritized CAR preparation based on objective factors, such as filing date, and is
20 working diligently to address the backlog of CARS. Out of fairness to all social security claimants,
21 Defendant respectfully requests that the Court defer to OAO's prioritization of cases for CAR
22 preparation and maintain consistency in the length of extensions granted in social security cases,
23 absent a showing of exceptional circumstances. Counsel for Defendant further states that the Office
24 of General Counsel (OGC) is monitoring receipt of transcripts on a daily basis and is committed to
25 filing Answers promptly upon receipt and review of the administrative records.

26 Given the volume of pending cases, Defendant requests an extension in which to respond to
the Complaint until November 16, 2020 If Defendant is unable to produce the certified

1 administrative record necessary to file an Answer in accordance with this Order, Defendant shall
2 request an additional extension prior to the due date.

3 The undersigned affirms that opposing counsel, does not object to the requested extension.

4 WHEREFORE, the Defendant asks the Court to enlarge the time for filing the Electronic
5 Certified Administrative Record and Answer to Plaintiff's Complaint until November 16, 2020
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8 Dated: September 10, 2020

9 Respectfully submitted

10 NICHOLAS A. TRUTANICH
United States Attorney

11 /s/ Marcelo Illarmo
12 MARCELO ILLARMO
Special Assistant United States Attorney
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14 IT IS SO ORDERED:

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16 Nancy J. Koppe
17 United States Magistrate Judge

18 Dated: September 11, 2020
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